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DEC 12 2006

Appellants:	Cynthia L. Wyngaard	Docket No.:	19,525
Serial No.:	10/729,485	Group:	3761
Confirmation No:	3112	Examiner:	Michael G. Bogart
Filed:	December 5, 2003	Date:	December 12, 2006
For:	Stretchable Absorbent Article Including A Suspended Absorbent Body		

Brief on Appeal to the Board of Patent Appeals and Interferences

Mail Stop Appeal Brief - Patents
Commissioner For Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

Pursuant to 37 C.F.R. 41.37 Appellants respectfully submit this Brief in support of their Appeal of Examiner Bogart's **Final Rejection** of claims 1-33 which was mailed on July 26, 2006.

On October 26, 2006, Appellants, pursuant to 37 C.F.R. 41.31 mailed a timely Notice of Appeal. Thus, the time period for filing this Brief ends on December 26, 2006.

Real Party in Interest

The present Application has been assigned to Kimberly-Clark Worldwide, Inc.

Related Appeals and Interferences

There are no related appeals and/or interferences with regard to the present Application.

Status of Claims

Claims 1-33 remain in the application with claims 1-33 being finally rejected.

Status of Amendments

No amendments were filed after the final Office Action mailed on July 26, 2006.

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12/13/2006 FNETEK11 00000034 110875 10729485
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Appeal Brief Transmittal Letter

Mail Stop Appeal Brief - Patents
Commissioner For Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

Pursuant to 37 C.F.R. 41.37, transmitted herewith is an Appeal Brief pursuant to the Notice of Appeal which was mailed on October 26, 2006.

Please charge the \$500.00 fee (fee code 1402), pursuant to 37 C.F.R. 41.20(b)(2), which is due to Kimberly-Clark Worldwide, Inc. deposit account number 11-0875.

Respectfully submitted,

CYNTHIA L. WYNGAARD

By: 

Randall W. Fieldhack
Registration No.: 43,611

CERTIFICATE OF TRANSMISSION

I, Mary L. Marchant, hereby certify that on December 12, 2006 this document is being facsimile transmitted to the United States Patent and Trademark Office, Fax No. (571) 273-8300.

Typed or printed name of person signing this certificate:

Mary L. Marchant

Signature:

Mary L. Marchant

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claims 27-33, which all eventually depend from claim 26, are also accordingly patentable over Jitoe.

For at least the reasons set forth above, Applicants respectfully request that all the rejections under 35 U.S.C. § 102 and 35 U.S.C. § 103 be withdrawn.

Conclusion

For the reasons stated above it is Appellants' position that the Examiner's rejection of claims has been shown to be untenable and should be **reversed** by the Board.

Please charge the \$500.00 fee (fee code 1402), pursuant to 37 C.F.R. 41.20(b)(2), for filing this Appeal Brief to Kimberly-Clark Worldwide, Inc. deposit account number 11-0875. Any additional prosecutorial fees which are due may also be charged to deposit account number 11-0875.

The undersigned may be reached at: (920) 721-8863

Respectfully submitted,

CYNTHIA L. WYNGAARD

By: 

Randall W. Fieldhack
Registration No.: 43,611

CERTIFICATE OF TRANSMISSION

I, Mary L. Marchant, hereby certify that on December 12, 2006 this document is being facsimile transmitted to the United States Patent and Trademark Office, Fax No. (571) 273-8300.


Mary L. Marchant

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Serial No.: 10/729,485

Summary of Claimed Subject Matter

The following summary correlates claim elements to specific embodiments described in the application specification, but does not in any manner limit claim interpretation. Rather, the following summary is provided only to facilitate the Board's understanding of the subject matter of this appeal.

Independent claim 1 is directed to an absorbent article 20 as representatively illustrated, for example, in Fig. 1. The absorbent article 20 defines a front waist region 22, a back waist region 24, a crotch region 26 that extends between and connects said front and back waist regions 22, 24, a longitudinal direction 48 and a lateral direction 49 (see Figs. 2-3), an inner surface 28, an outer surface 30 opposite said inner surface 28, and a pair of longitudinally opposed end margins 45 and a pair of laterally opposed side margins 47. Page 6, lines 1-27. The article 20 includes a stretchable outercover 40 (page 13, lines 4-23) and a stretchable bodyside liner 42 (page 17, lines 8-14) joined to the stretchable outercover 40 in a superposed relation wherein said outercover 40 and said bodyside liner 42 are joined along at least a portion of each of said end margins 45 to provide a front waist seam 62 and a back waist seam 64 and wherein said outercover 40 and said bodyside liner 42 are joined along at least a portion of each of said side margins 47 in said front waist region 22 and said back waist region 24 to provide a pair of side seams 61 in each of said front waist region 22 and said back waist region 24. Page 7, lines 3-17 and Figs. 1-3. The article 20 also includes an absorbent body 44 disposed between said outercover 40 and said bodyside liner 42, said absorbent body 44 defining a pair of longitudinally opposed absorbent end edges 90 and a pair of laterally opposed absorbent side edges 92. Page 18, lines 11-13 and Figs. 3, 4, and 7. The article 20 also includes a first elastomeric suspension member 102 disposed only in said front waist region 22 and attached to said absorbent body 44 in said front waist region 22 and a second elastomeric suspension member 104 attached to said absorbent body 44 in said back waist region 24. Page 22, lines 20-27 and Figs. 3, 4, and 7. The first elastomeric suspension member 102 is sandwiched between said outercover 40 and said bodyside liner 42 in said pair of side seams 61 in said front waist region 22, and wherein said second elastomeric suspension member 104 is sandwiched between said outercover 40 and said bodyside liner 42 in said pair of side seams 61 in said back waist region 24. Page 24, line 17 to page 24, line 15 and Figs. 3, 4, and 7.

Independent claim 18 is directed to a disposable absorbent article 20 as representatively illustrated, for example, in Fig. 1. The absorbent article 20 defines a front waist region 22, a back waist region 24, a crotch region 26 that extends between and connects said front and back waist regions 22, 24, a longitudinal direction 48 and a lateral direction 49 (see Figs. 2-3). The article 20 includes a stretchable absorbent assembly 32 (page 20, line 15 to page 21, line 26) defining a pair of longitudinally opposed end margins 45 and a pair of laterally opposed side margins 47. Page 6, lines 1-27. The stretchable

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absorbent assembly 32 includes a stretchable outercover 40 (page 13, lines 4-23) and a stretchable bodyside liner 42 (page 17, lines 8-14) joined to the stretchable outercover 40 in a superposed relation to form a pair of absorbent assembly side seams 61 and a pair of absorbent assembly end seams 62, 64. Page 7, lines 3-17 and Figs. 1-3. The article 20 also includes a first elastomeric suspension member 102 disposed only in said front waist region 22 and attached to said absorbent assembly 32 in said front waist region 22. Page 22, lines 20-27 and Figs. 3, 4, and 7. The stretchable absorbent assembly 32 also includes a second elastomeric suspension member 104 attached to said absorbent assembly 32 in said back waist region 24 and an absorbent body 44 disposed between said outercover 40 and said bodyside liner 42. Page 22, lines 20-27 and Figs. 3, 4, and 7. The absorbent body 44 is joined to said first elastomeric suspension member 102 and said second elastomeric suspension member 104, and the absorbent body 44 is configured to float between said outercover 40 and said bodyside liner 42. See, e.g., page 23, lines 1-18.

Independent claim 26 is directed to a disposable absorbent article 20 defining a front waist region 22, a back waist region 24, a crotch region 26 that extends between and connects said front and back waist regions 22, 24, a longitudinal direction 48 and a lateral direction 49 (see Figs. 2-3), and a pair of longitudinally opposed end margins 45 and a pair of laterally opposed side margins 47. Page 6, lines 1-27. The article 20 includes a stretchable outercover 40 (page 13, lines 4-23) and a stretchable bodyside liner 42 (page 17, lines 8-14) joined to the stretchable outercover 40 in a superposed relation wherein said outercover 40 and said bodyside liner 42 are joined along at least a portion of said end margins 45 in said front waist region 22 and said back waist region 24 to provide a front waist seam 62 and a back waist seam 64 and wherein said outercover 40 and said bodyside liner 42 are joined along at least a portion of said side margins 47 in said front waist region 22 and said back waist region 24 to provide a pair of side seams 61 in said front waist region 22 and said back waist region 24. Page 7, lines 3-17 and Figs. 1-3. The article 20 also includes an absorbent body 44 disposed between said outercover 40 and said bodyside liner 42, said absorbent body 44 defining a pair of longitudinally opposed absorbent end edges 90 and a pair of laterally opposed absorbent side edges 92. Page 18, lines 11-13 and Figs. 3, 4, and 7. The article 20 also includes at least one elastomeric suspension member 100 attached to each of said absorbent side edges 92 in said front waist region 22, wherein said at least one elastomeric suspension member 100 is disposed only in said front waist region 22 and is sandwiched between said outercover 40 and said bodyside liner 42 in said front waist seam 22. Page 24, line 6 to page 25, line 15. The article 20 also includes at least one elastomeric suspension member 100 attached to each of said absorbent side edges 92 in said rear waist region 24, wherein said at least one elastomeric suspension member 100 is sandwiched between said outercover 40 and said bodyside liner 42 in said back waist seam 24. Page 24, lines 6-16.

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Grounds of Rejection to be Reviewed on Appeal

Ground 1

Claims 1-33 stand rejected under 35 U.S.C. § 102(b) as being anticipated by, or, in the alternative, under 35 U.S.C. § 103(a) as obvious over U.S. Patent Application Publication No. US 2002/0151862, published October 17, 2002, to Jitoe, et al. (hereinafter "Jitoe"). Under Ground 1, claims 1-33 are argued as a group.

Argument

Ground 1 -- Rejection Of Claims 1-33

Claims 1-33 stand rejected under 35 U.S.C. § 102(b) as being anticipated by, or, in the alternative, under 35 U.S.C. § 103(a) as obvious over Jitoe. Appellant respectfully submit that the Examiner's rejection is improper and should be reversed.

Jitoe is directed to a disposable pull-on diaper having elastic members extending circumferentially around the diaper to provide circumferential tension and thus a tighter fit. Independent claim 1 of the present invention is directed to an absorbent article including, *inter alia*, a first elastomeric suspension member disposed only in said front waist region and attached to said absorbent body in said front waist region, and a second elastomeric suspension member attached to said absorbent body in said back waist region.

Applicants assert that Jitoe fails to disclose the arrangement of elastomeric suspension members as required by claim 1. Specifically, Jitoe does not disclose a first elastomeric suspension member that is "attached to said absorbent body in said front waist region." Nor does Jitoe disclose a second elastomeric suspension member "attached to said absorbent body in said back waist region." In Jitoe, elastic members extend across the diaper from the heat-sealing zone on one side of the diaper to the heat-sealing zone on the other side of the diaper without being attached to an absorbent body in any manner.

Much of the dispute in this case appears to be found in the Examiner's interpretation of the various forms of the words "attach" and "join" based on the Office Actions and particularly on the Examiner's assertions in the Advisory Action mailed October 6, 2006. It may be instructive to determine how "attach" and "join" are used by the Applicants. "Attach" and "join" in their various forms are used by the Applicants in every instance in their application in their plain meanings, as generally synonymous with affix and bond (except, of course, for the form "unattached" at page 8, line 2). Contrary to the Examiner's assertion in the Advisory Action mailed October 6, 2006, Applicants describe in their

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specification a number of mechanisms by which two structures, including the suspension members and the absorbent body, may be "attached" or "joined." See, e.g.:

1. "The suspension members 100 may be attached to the absorbent body 44 by any suitable means known in the art, including adhesives, molten thermoplastic material that is allowed to fuse upon solidification, ultrasonic bonding, or pressure bonding and the like or combinations thereof." Page 23, lines 19-22.

2. "In configurations where the side panels 34, 134, are separately attached (Figs. 5-7) the panels can be permanently bonded ... The side panels 34 and 134 may be bonded to the absorbent assembly 32 using attachment means known to those skilled in the art such as adhesive, thermal or ultrasonic bonding." Page 9, lines 3-12.

3. "In certain aspects, a surge management layer 60 may be optionally located adjacent the absorbent body 44 and attached to various components in the article 20 such as the absorbent body 44 or the bodyside liner 42 by methods known in the art, such as by adhesive (Fig. 4)." Page 22, lines 1-4.

4. "Accordingly, the suspension members 100 may be held in place in the seams 61, 62 and 64 by way of the joinder of the outercover 40 and the liner 42, or additional attachment may be employed to hold the suspension members 100 in the seams 61, 62 and 64 such as adhesives, molten thermoplastic material that is allowed to fuse upon solidification, ultrasonic bonding, or pressure bonding, stitching, and the like or combinations thereof." Page 24, lines 11-16.

"Attach" and "join" are not used by the Applicants to describe a situation in which two items are simply positioned adjacent or near one another, as proposed by the Examiner. In Jitoe, the auxiliary elastic members 21, 21B are disposed near the absorbent core 4 (see, e.g., Fig. 2), but are in no way attached to the absorbent core 4 (see, e.g., paragraph 34: "Since the portions of these auxiliary elastic members 21 extending across the absorbent core 4 are joined neither to the backsheet 3 nor to the absorbent core..."). Jitoe specifically states that its elastic members are not joined to its absorbent core. Jitoe's elastic members are not attached to its absorbent core (see, e.g., paragraphs 0010, 0030, 0034, and 0041), and cannot be attached to the absorbent core without causing wrinkling of the backsheet and/or absorbent core – a result to be specifically avoided as outlined in those same paragraphs.

Further, the Applicants differentiate structures that are attached to each other from those structures that may be near each other but are not attached to each other. See, e.g., page 23, lines 1-6: "Accordingly, the absorbent body 44 is secured within the central absorbent assembly, while yet is configured to 'float' between the outercover 40 and the bodyside liner 42. That is, the absorbent body 44 is suspended relative to the outercover 40 and liner 42 and is therefore slidably contained between the

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outercover 40 and the liner 42 while remaining attached to the central absorbent assembly 32 via the suspension members 100." The absorbent body 44 is not attached to the outercover 40 or the bodyside liner 42, although it certainly may be disposed near them. Because the Applicants differentiate between attachment and mere physical nearness, the Examiner's contention that these concepts are synonymous is without merit.

Likewise, Jitoe cannot teach or suggest the claimed invention because the different structures perform different functions in different ways. As described above, Jitoe's elastic members are not attached to the absorbent core and cannot be attached to the absorbent core and still perform their function. One skilled in the art would not be taught or given a suggestion to accomplish the claimed invention by the disclosure of Jitoe, and the Examiner has not provided a basis for such teaching or suggestion. In fact, as described above, Jitoe specifically teaches away from attaching an elastic member to an absorbent core because, according to Jitoe, such an attachment would create the problems Jitoe sought to resolve (again, see e.g., paragraphs 0010, 0030, 0034, and 0041).

There is nothing in Jitoe that discloses, teaches, or suggests a first elastomeric suspension member that is "attached to said absorbent body in said front waist region" or a second elastomeric suspension member "attached to said absorbent body in said back waist region." Jitoe, in fact, does quite the opposite – it describes how an elastic member must not be attached to an absorbent body.

Accordingly, for at least these reasons, Applicants respectfully submit that claim 1 is patentable over Jitoe. Moreover, claims 2-17, which all eventually depend from claim 1, are also accordingly patentable over Jitoe.

Similarly, independent claim 18 of the present invention is directed to a disposable absorbent article including, *inter alia*, a first elastomeric suspension member disposed only in said front waist region and attached to said absorbent assembly in said front waist region; and a second elastomeric suspension member attached to said absorbent assembly in said back waist region. For at least the same reasons described above with respect to claim 1, Applicants respectfully submit that claim 18 is patentable over Jitoe. Moreover, claims 19-25, which all eventually depend from claim 18, are also accordingly patentable over Jitoe.

Similarly, independent claim 26 of the present invention is directed to a disposable absorbent article including, *inter alia*, at least one elastomeric suspension member attached to each of said absorbent side edges in said front waist region, and at least one elastomeric suspension member attached to each of said absorbent side edges in said rear waist region. For at least the reasons described above with respect to claim 1, Applicants respectfully submit that claim 26 is patentable over Jitoe. Moreover,

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Claims Appendix

The claims on appeal are:

1. An absorbent article defining a front waist region, a back waist region, a crotch region that extends between and connects said front and back waist regions, a longitudinal direction and a lateral direction, an inner surface, an outer surface opposite said inner surface, and a pair of longitudinally opposed end margins and a pair of laterally opposed side margins, said article comprising:

A stretchable outercover;

A stretchable bodyside liner joined to the stretchable outercover in a superposed relation wherein said outercover and said bodyside liner are joined along at least a portion of each of said end margins to provide a front waist seam and a back waist seam and wherein said outercover and said bodyside liner are joined along at least a portion of each of said side margins in said front waist region and said back waist region to provide a pair of side seams in each of said front waist region and said back waist region;

An absorbent body disposed between said outercover and said bodyside liner, said absorbent body defining a pair of longitudinally opposed absorbent end edges and a pair of laterally opposed absorbent side edges;

A first elastomeric suspension member disposed only in said front waist region and attached to said absorbent body in said front waist region; and

A second elastomeric suspension member attached to said absorbent body in said back waist region;

Wherein said first elastomeric suspension member is sandwiched between said outercover and said bodyside liner in said pair of side seams in said front waist region, and wherein said second elastomeric suspension member is sandwiched between said outercover and said bodyside liner in said pair of side seams in said back waist region.

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2. The absorbent article of claim 1 wherein said first suspension member defines a first suspension member width in said lateral direction that is substantially equal to an article width in said front waist region and said second suspension member defines a second suspension member width in said lateral direction that is substantially equal to an article width in said back waist region.
3. The absorbent article of claim 1 wherein said first suspension member is sandwiched between said outercover and said bodyside liner in said front waist seam.
4. The absorbent article of claim 1 wherein said second suspension member is sandwiched between said outercover and said bodyside liner in said back waist seam.
5. The absorbent article of claim 1 wherein each of said suspension members is biaxially stretchable.
6. The absorbent article of claim 1 wherein each of said suspension members may be elongated in at least one direction at least 30%.
7. The absorbent article of claim 1 wherein each of said suspension member may be elongated in at least one direction at least 50%.
8. The absorbent article of claim 1 wherein at least a portion of each of said suspension members is in alignment with at least 5% of said absorbent body in the longitudinal direction.

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9. The absorbent article of claim 1 wherein said absorbent body is extensible.

10. The absorbent article of claim 1 wherein said absorbent body is elastomeric.

11. The absorbent article of claim 1 wherein said absorbent side edges are non-parallel and said absorbent body includes a pair of lateral extensions in said front waist region and a pair of lateral extensions in said back waist region.

12. The absorbent article of claim 1 wherein said outercover is elastomeric.

13. The absorbent article of claim 1 wherein said outercover may be elongated at least 50%.

14. The absorbent article of claim 1 wherein said bodyside liner is elastomeric.

15. The absorbent article of claim 1 wherein said bodyside liner may be elongated at least 50%.

16. The absorbent article of claim 1 wherein said absorbent body is configured to float between said outercover and said bodyside liner.

17. The absorbent article of claim 1 wherein said absorbent body is disposed toward said inner surface relative to said first and second suspension members.

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18. A disposable absorbent article defining a front waist region, a back waist region, a crotch region that extends between and connects said front and back waist regions, a longitudinal direction and a lateral direction, said article comprising:

A stretchable absorbent assembly defining a pair of longitudinally opposed end margins and a pair of laterally opposed side margins, said stretchable absorbent assembly comprising:

i) A stretchable outercover;

ii) A stretchable bodyside liner joined to the stretchable outercover in a superposed relation to form a pair of absorbent assembly side seams and a pair of absorbent assembly end seams;

iii) A first elastomeric suspension member disposed only in said front waist region and attached to said absorbent assembly in said front waist region;

iv) A second elastomeric suspension member attached to said absorbent assembly in said back waist region; and

v) An absorbent body disposed between said outercover and said bodyside liner;

Wherein said absorbent body is joined to said first elastomeric suspension member and said second elastomeric suspension member, and wherein said absorbent body is configured to float between said outercover and said bodyside liner.

19. The absorbent article of claim 18 wherein each of said suspension members is biaxially stretchable.

20. The absorbent article of claim 18 wherein each of said suspension member may be elongated in at least one direction at least 50%.

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21. The absorbent article of claim 18 wherein said absorbent body is elastomeric.

22. The absorbent article of claim 18 wherein said outercover is elastomeric.

23. The absorbent article of claim 18 wherein said outercover may be elongated at least 50%.

24. The absorbent article of claim 18 wherein said bodyside liner is elastomeric.

25. The absorbent article of claim 18 wherein said bodyside liner may be elongated at least 50%.

26. A disposable absorbent article defining a front waist region, a back waist region, a crotch region that extends between and connects said front and back waist regions, a longitudinal direction and a lateral direction, and a pair of longitudinally opposed end margins and a pair of laterally opposed side margins, said article comprising:

A stretchable outercover;

A stretchable bodyside liner joined to the stretchable outercover in a superposed relation wherein said outercover and said bodyside liner are joined along at least a portion of said end margins in said front waist region and said back waist region to provide a front waist seam and a back waist seam and wherein said outercover and said bodyside liner are joined along at least a portion of said side margins in said front waist region and said back waist region to provide a pair of side seams in said front waist region and said back waist region;

An absorbent body disposed between said outercover and said bodyside liner, said absorbent body defining a pair of longitudinally opposed absorbent end edges and a pair of laterally

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opposed absorbent side edges;

At least one elastomeric suspension member attached to each of said absorbent side edges in said front waist region, wherein said at least one elastomeric suspension member is disposed only in said front waist region and is sandwiched between said outercover and said bodyside liner in said front waist seam; and

At least one elastomeric suspension member attached to each of said absorbent side edges in said rear waist region, wherein said at least one elastomeric suspension member is sandwiched between said outercover and said bodyside liner in said back waist seam.

27. The absorbent article of claim 26 wherein said absorbent body is configured to float between said outercover and said bodyside liner.

28. The absorbent article of claim 26 wherein each of said suspension members are biaxially stretchable.

29. The absorbent article of claim 26 wherein each of said suspension members may be elongated in at least one direction at least 50%.

30. The absorbent article of claim 26 wherein said absorbent body is elastomeric.

31. The absorbent article of claim 26 wherein said outercover may be elongated at least 50%.

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32. The absorbent article of claim 26 wherein said bodyside liner is elastomeric.

33. The absorbent article of claim 26 wherein said bodyside liner may be elongated at least 50%.

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Evidence Appendix

None.

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Related Proceedings Appendix

None.